

# Beyond Child Welfare—Theories on Child Homelessness

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## Introduction

Since the start of the recession that began in 2007, child homelessness has increased in the United States, from 1.2 million to 1.6 million.<sup>1</sup> Recent federal data shows that since 2010, the number of children who experienced homelessness in 2013 reached an astounding 2.5 million.<sup>2</sup> New York City has been the eye at the center of this storm, although southern states have

1. See Yvonne Vissing, *Homeless Children and Youth: An Examination of Legal Challenges and Directions*, 13 J.L. Soc’y 455, 458 (2012) [hereinafter HOMELESS CHILDREN AND YOUTH].

2. Ellen L. Bassuk et al., *America’s Youngest Outcasts: A Report Card on Child Homelessness*, THE NAT’L CTR. ON FAMILY HOMELESSNESS 15 (November 2014), available at <http://www.homelesschildrenamerica.org/mediadocs/280.pdf>.

the highest percentage of homeless children.<sup>3</sup> At the end of 2013, the homeless population in New York was more than 52,000 people, the highest number on record since the Great Depression.<sup>4</sup> Of this number, 22,000 of were children. The most updated information captured by the National Center on Family Homelessness reveals that the actual number of homeless children in New York is almost twelve times as high at 258,108.<sup>5</sup> A recent New York Times series entitled, *Invisible Child*, highlights the life struggles of eleven-year-old Dasani Coates, a homeless child living with her family in Brooklyn, New York.<sup>6</sup> In one part of the series, journalist Andrea Elliott contrasts the struggle of Dasani's ten member family living at a decrepit shelter to the gentrification and wealth on the other side of Fort Greene, a historic Brooklyn neighborhood transformed with the help of former Mayor Michael Bloomberg into a luxury urban retreat, with one million to two million dollar condominiums and townhomes.<sup>7</sup>

The "contrast of affluence and wretchedness"<sup>8</sup> within one city block of Brooklyn is a microcosm of the wealth of America and the depth of poverty that engulfs close to fifty million families.<sup>9</sup> It calls into question the state's role in supporting the accumulation of assets by one segment of society while depriving another segment of the basic framework and necessities to merely live from day to day. This article explores theories on poverty, specifically focusing on our society's responses to child homelessness.<sup>10</sup>

3. See Vissing, *supra* note 1, at 461.

4. See Andrea Elliott & Rebecca R. Ruiz, *New York Is Removing Over 400 Children From 2 Homeless Shelters*, N.Y. TIMES (Feb. 21, 2014), [http://www.nytimes.com/2014/02/21/nyregion/new-york-is-removing-over-400-children-from-2-homeless-shelters.html?\\_r=0](http://www.nytimes.com/2014/02/21/nyregion/new-york-is-removing-over-400-children-from-2-homeless-shelters.html?_r=0).

5. See Bassuk et al., *supra* note 2, at 55. California has the highest sheer number of homeless children with 526, 708 in 2012-13. See *id.* at 27.

6. See Andrea Elliott, *Invisible Child: Dasani's Homeless Life*, N.Y. TIMES (Feb. 19, 2014), <http://www.nytimes.com/projects/2013/invisible-child/#/?chapt=1>.

7. See *id.*

8. See Thomas Paine, *Agrarian Justice* 15 (1797).

9. See Kathleen Short, *The Research Supplemental Poverty Measure: 2012*, U.S. CENSUS BUREAU 5 (2013), available at <http://www.census.gov/prod/2013pubs/p60-247.pdf> (noting that between 47 million and 49.7 million live in poverty depending on whether one utilizes the official measure of poverty in the U.S. or the supplemental poverty measure that takes into consideration government programs that assist poor citizens).

10. The scope of this article focuses on homeless children who remain intact with their birth families or guardians and does not cover the situation of runaway children and youth who are not living with any family members during their time of homelessness.

“Only when we can confront the meaning of constructed inequity as something that has been made by public policy and can be *unmade* by public policy can we begin to address the question of civic entitlement in the other America.”<sup>11</sup> Throughout U.S. history, people have often categorized the poor as either “deserved” or “undeserved.”<sup>12</sup> This article will consider why there is an ambivalent and sometimes hostile response to chronic, persistent poverty among families with young children, and whether or not the state has a responsibility to provide more comprehensive support for one of the most vulnerable groups in society.

Part I provides an overview of child homelessness in America and the environmental and social factors that lead families into poverty that results in a lack of stable residence. The different ways that child homelessness is characterized by government entities is presented, along with a brief comparison of how other European countries buttress poverty and inequality among families and children. Part II reviews the historical role of the state in addressing child homelessness, noting how the child welfare system began as a tool to deal with poor and homeless children.

Part III discusses how the foundational intersection of poverty and child welfare impacts the involvement of the state in monitoring homeless families for child abuse and neglect. It also considers how family homelessness can result in situational parental neglect, a term this article coins to define neglect that results from a short-term situation where the parent must rely upon environmental or social factors in order to prevent the neglect from occurring. Part III also presents how child homelessness disproportionately impacts children of color. It illustrates how poverty and race have been ingrained together as part of the American legal, social and political landscape through formal laws, accepted customs, and political agendas designed to limit or cap access to the state safety net by certain citizens.

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11. VALERIE POLAKOW, *SINGLE MOTHERS AND THEIR CHILDREN IN THE OTHER AMERICA* 164 (1993).

12. See Jacquelynne Floyd, *Floyd: If Poor Need Our Help, Does it Matter How They Got There?*, DALLAS MORNING NEWS (July 7, 2014), <http://www.dallasnews.com/news/columnists/jacquelynne-floyd/20140707-if-poor-need-our-help-does-it-matter-how-they-got-there.ece>; see also MARY DALY, *WELFARE* 14 (2011) [hereinafter *WELFARE*]; TIMOTHY A. HACSI, *SECOND HOME: ORPHAN ASYLUMS AND POOR FAMILIES IN AMERICA* 61 (1997) (noting that from 1880-1900, views of the poor became harsher “as the belief in hereditarian explanations of individual flaws became more prominent”).

Part IV analyzes various theories on poverty, focusing on vulnerability theory and the principle of subsidiarity. This article argues that vulnerability theory can be utilized as a way to highlight the universal nature of homelessness, and in doing so motivate the state to develop novel ways to support homeless children and families. It further asserts that the principle of subsidiarity can be used as a framework to incorporate new methods for governments and private charities to unite and provide alternative housing for homeless families. Part IV concludes with a brief review of the U.S. strategy for ending family homelessness and three ideas that could expand the current safety net for homeless children as well as help revise the manner by which Americans view poverty.

This article further argues that the U.S. approach to dealing with child homelessness should be grounded in a theory that accounts for existing racial disparities and capitalizes on the concept of a universal common humanity that drives both the state and the public to help those in need. Classifications of ‘deserving’ or ‘undeserving’ poor exacerbate existing economic inequities among the poor and continue false racial tropes. Amalgamating vulnerability theory with the principle of subsidiarity places onus on both the state and public citizenry to treat child homelessness like an emergency situation, which would allow for unique and transformative assistance for both children and their families.

### *I. Child Homelessness in the United States*

One in thirty children in America is homeless.<sup>13</sup> From 2012 to 2013, child homelessness increased by 8% nationally, increasing overall in 31 states and the District of Columbia.<sup>14</sup> Homeless children in America are comprised of primarily two subgroups—minor children who accompany their parent(s) or guardian(s) during a homeless episode or unaccompanied youth who may be runaways, foster children, abandoned children, or children ejected from their homes. Families with children comprise 37% of the total homeless population, and the majority of these families are headed by single females.<sup>15</sup> Forty-two percent of children in homeless families are

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13. Bassuk et al., *supra* note 2, at 6.

14. *Id.*

15. THE NAT’L CTR. ON FAMILY HOMELESSNESS, THE CHARACTERISTICS AND NEEDS OF FAMILIES EXPERIENCING HOMELESSNESS 3 (December 2011), *available at* <http://www.familyhomelessness.org/media/306.pdf>.

under age six.<sup>16</sup> While homeless, children experience high rates of chronic and acute health problems, and the constant stress and trauma of being homeless has serious effects on their mental health, development, and ability to learn.<sup>17</sup>

According to the National Center on Family Homelessness, there are six major causes of child homelessness in America, including (1) the nation's high poverty rate; (2) lack of affordable housing; (3) continuing impacts of the Great Recession; (4) racial disparities; (5) the challenges of single parenting; and (6) the ways in which traumatic experiences, especially domestic violence, precede and prolong homelessness for families.<sup>18</sup> A typical homeless family is composed of a single minority mother with two or three children under the age of six years old.<sup>19</sup> Nationally, families of color are overrepresented in the homeless population, making up a total of 61% of homeless families.<sup>20</sup> Generally, these mothers have low education and poor job skills, which results in limited work opportunities that pay a livable wage.<sup>21</sup> Over 92% of homeless mothers have been victims of severe physical and sexual abuse during their lifetime,<sup>22</sup> and they have increased medical, mental health, and substance use problems with few if any family or community supports.<sup>23</sup>

Though the combination of the above-referenced factors causes the most vulnerable families to enter the pathway to homelessness, the problem of child homelessness is obviously a symptom of family poverty. Children are disproportionately represented among the poor, comprising 34% of all people living in poverty even though they account for only 24% of the U.S. population.<sup>25</sup> Ten million working families are poor or near poor.<sup>26</sup> Two

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16. *Id.* at 3.

17. *Id.* at 4–5.

18. *Id.* at 7.

19. *See id.*; *see also* POLAKOW, *supra* note 11, at 90–97.

20. *See* THE NAT'L CTR. ON FAMILY HOMELESSNESS, *supra* note 15, at 3 (noting that 43% of homeless families are African-American, 38% are White, 15% are Hispanic, and 3% are Native American).

21. *See* Ellen L. Bassuk, *Ending Child Homelessness in America*, 80 AM. J. ORTHOPSYCHIATRY 496, 497 (2010).

22. THE NAT'L CTR. ON FAMILY HOMELESSNESS, *supra* note 15, at 2.

23. *See* Bassuk, *supra* note 21, at 497.

24. THE NAT'L CTR. ON FAMILY HOMELESSNESS, *supra* note 15, at 2.

25. Bassuk et al., *supra* note 2, at 78.

26. THE NAT'L CTR. ON FAMILY HOMELESSNESS, *supra* note 15, at 2.

parent families make up 17% of those who lived below the poverty line in 2009, and single parent families are double that percentage.<sup>27</sup> The poverty rate in 2013 for single mothers is five times the rate (39.6% compared to 7.6%) for families with a married couple.<sup>28</sup> The income from one-fifth of all jobs does not prevent a family of four from poverty, and the current federal minimum wage of \$7.25 still leaves a single full-time wage earner below the federal poverty line.<sup>29</sup> In order to meet their most basic needs, families need an income twice as high as the Federal Poverty Level.<sup>30</sup> The Stanford Center on Poverty and Inequality's overall assessment of the state of the union is that "the country's economy and labor market remain in deep disrepair, whereas [] various post-market institutions (e.g., the safety net, educational institutions, health institutions) have a mixed record of coping with the rising poverty and inequality."<sup>31</sup>

Homelessness is defined in different ways by various government agencies. The United States Department of Education ("DOE") defines children and youth who are homeless as those who does not have fixed, regular and adequate nighttime residence.<sup>32</sup> The Department of Housing and Urban Development ("HUD") has a more restrictive definition of homelessness in that it only counts persons who do not have a fixed, regular nighttime residence and whose primary nighttime residence is a shelter, the street, or the equivalent of a mental illness institution.<sup>33</sup> HUD does not count persons who are living in cars, abandoned buildings, substandard housing, motels, hotels, trailer parks, or camping grounds due to lack of alternative accommodations. It also does not consider as homeless those who "double up" or share housing with others due to a loss of housing or economic hardship. Because of the different government definitions of

27. *Id.*

28. Bassuk et al., *supra* note 2, at 78.

29. THE NAT'L CTR. ON FAMILY HOMELESSNESS, *supra* note 15, at 2.

30. See Nancy K. Caution, *When Work Doesn't Pay: What Every Policymaker Should Know*, NAT'L CTR. FOR CHILDREN IN POVERTY 5 (2006), available at [http://www.nccp.org/publications/pdf/text\\_666.pdf](http://www.nccp.org/publications/pdf/text_666.pdf).

31. THE STANFORD CTR ON POVERTY AND EQUALITY, THE POVERTY AND INEQUALITY REPORT 5 (2014), [http://web.stanford.edu/group/scspi/sotu/SOTU\\_2014\\_CPI.pdf](http://web.stanford.edu/group/scspi/sotu/SOTU_2014_CPI.pdf).

32. McKinney-Vento Homeless Assistance Act of 1987, Pub. L. No. 100-77, 101 Stat. 482.

33. See PAUL G. SHANE, WHAT ABOUT AMERICA'S HOMELESS CHILDREN? 3-4, (1996).

homelessness, the overall rates of homeless families and children vary dramatically.<sup>34</sup>

For example, 2013 HUD statistics showed that “almost 92,600 people were considered chronically homeless as individuals,” and there were 16,539 people in families considered to be chronically homeless.<sup>35</sup> Overall, there were 610,042 homeless persons in American in 2013.<sup>36</sup> Although homelessness decreased nationally by 3.7% from 2012 to 2013, many states experienced significant increases in the rate of homelessness.<sup>37</sup> The number of families experiencing homelessness also decreased nationally by 7.2 %, but sixteen states reported increases in family homelessness.<sup>38</sup> These statistics are much lower than those captured by the DOE, primarily because HUD statistics are based on “Point-in-Time” numbers of sheltered and unsheltered persons on a single night in January in cities and towns across the nation.<sup>39</sup> The Point-in-Time counts are the measure used by communities to report data to HUD for grants to provide resources such as emergency shelter and transitional housing for those experiencing homelessness.<sup>40</sup>

The DOE has a broader definition under the McKinney-Vento Homeless Assistance Act of 2001, which protects the educational rights of homeless children and youth and allows schools to count and serve children who are denied services by HUD.<sup>41</sup> This Act has reduced the instability of children who are homeless by providing a means for children to remain in their home school despite where they may eventually live during a period of homelessness. It also provides a host of other support networks for unaccompanied youth and homeless children still living with their families to ensure that these students receive appropriate services such as special

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34. Bassuk et al., *supra* note 2, at 11.

35. See NAT'L ALLIANCE TO END HOMELESSNESS, THE STATE OF HOMELESSNESS IN AMERICA 2014 11 (2014), [http://b3cdn.net/naeh/d1b106237807ab260f\\_qam6ydz02.pdf](http://b3cdn.net/naeh/d1b106237807ab260f_qam6ydz02.pdf). The definition of a chronically homeless individual or family is a person or head of household who has a disabling condition and has been continuously homeless for one year or more, or has experienced at least four episodes of homelessness in the last three years. *Id.*

36. See *id.*

37. See *id.* at 15–18. Twenty states reported increases in homelessness from 2012–2013, including Washington, D.C., California, Hawaii, New York and Oregon. *Id.* at 16–18.

38. See *id.* at 22.

39. See Bassuk et al., *supra* note 2, at 11.

40. See NAT'L ALLIANCE TO END HOMELESSNESS, *supra* note 35, at 14.

41. See Vissing, *supra* note 1, at 462, 482.

education, mentoring, preschool, and referrals to health care services.<sup>42</sup> According to the DOE, there were over 2,483,539 million homeless children enrolled in U.S. public schools in 2013.<sup>43</sup>

The different definitions of homelessness by federal agencies complicate how and if appropriate resources are being allocated to address the problem.<sup>44</sup> HUD's definition does not accurately estimate the number of family members and children who experience homelessness throughout the year because of the single night Point-in-Time approach.<sup>45</sup> The fact that the HUD approach illustrates a decrease in unsheltered family homelessness and an increase in sheltered families in 2014 creates a false reality.<sup>46</sup> This approach does not count the number of homeless families and children living in circumstances that are excluded from the HUD definition, such as those "doubled-up" with relatives or friends, which is estimated to be 75% of homeless children nationally.<sup>47</sup> A unified federal definition would help the federal government in assessing both the prevalence of child homelessness as well as present a more accurate picture of the scope of family poverty.

How various states handle poverty and inequality among families is the focus of the Luxembourg Income Study, a comprehensive study that compares income levels, poverty rates, and government policies in selected Western nations, including the United States.<sup>48</sup> The most revealing fact about the United States with regard to child poverty is that the poverty rate has not changed much within the last thirty-five years. The most alarming fact is that the U.S. private economy generates more relative poverty among children than the private economies of many other western industrialized nations, and the U.S. does far less than the other nations to address this problem.<sup>49</sup> Countries in Europe have much stronger government supports for working families than the United States, and these supports make a

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42. *Id.* at 483–84.

43. Bassuk et al., *supra* note 2, at 14.

44. *Id.* at 11.

45. *Id.*

46. *Id.*

47. *Id.* at 11–12.

48. See ISAAC SHAPIRO & ROBERT GREENSTEIN, POVERTY AND INEQUALITY IN INTERNATIONAL PERSPECTIVE IN CRISIS IN AMERICAN INSTITUTIONS 128 (Jerome H. Skolnick and Elliott Currie eds., 9th ed. 1994).

49. *Id.* at 129.



large difference in the number of families that experience poverty.<sup>50</sup> For example, European citizens are guaranteed much more social assistance or welfare than U.S. citizens, including programs that provide for support for unemployment, illness, accidents at work, pregnancy, child and elder care, widowhood and old age.<sup>51</sup> In some Western European nation states, there is also guaranteed access to certain educational, housing, and social and health services.<sup>52</sup>

In summary, child homelessness is an increasingly severe problem for the U.S. since the Great Recession, and there are many complex causes. Single mothers with children who have experienced domestic violence make up a significant number of homeless families. High poverty rates and the manner in which U.S. labor markets and other institutions deal with the issue of poverty increases inequalities and the likelihood of families to experience homelessness. In addition, the lack of a universal definition of homelessness makes accurate provision of resources difficult. Finally, compared to other industrialized western nations, the U.S. provides much less government support to alleviate poverty among families.

## *II. Historical Role of the State in Addressing Child Homelessness*

What is the role of the state in addressing what could be considered as societal neglect of poor children? The history of child welfare illustrates that “assistance” for poor children consisted of child labor through the indenture system or apprenticeship,<sup>53</sup> or placing children outside of their families in almshouses or institutions.<sup>54</sup> Orphan asylums developed as a means to support dependent children for almost a century, funded through a

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50. See Janet C. Gornick & Markus Jäntti, *Child Poverty in Upper-Income Countries: Lessons from the Luxembourg Income Study*, in *FROM CHILD WELFARE TO CHILD WELL-BEING* 339–68 (Kamerman et al., eds., 2010). The risk of living in poverty is strongly influenced by the design of a country’s instruments of redistribution, such as taxes and transfers of income. For example, though the UK and the US have much in common, labor market patterns and public policy serve an important role in reducing the percentage of poor children in the UK by half (from 34% to 19%). After accounting for taxes and transfers in the U.S., the percentage of poor children is only reduced by 3% from 25% to 22%.

51. WELFARE, *supra* note 12, at 91.

52. *Id.* at 92.

53. See LEROY ASHBY, *ENDANGERED CHILDREN: DEPENDENCY, NEGLECT, AND ABUSE IN AMERICAN HISTORY* 6–7 (1997).

54. *Id.* at 64–75.

combination of public and private means and managed locally by specific religious groups.<sup>55</sup> The mission of these institutions was “to clothe, house and educate children; provide them with a specific moral and religious code; and otherwise care for children until they could be indentured, placed in a family or returned to their own homes.”<sup>56</sup> Poor parents usually suffered from unemployment, illness, and spousal death, and though children were placed in orphan asylums for temporary care, they were often reunited with their families.<sup>57</sup>

The U.S. government became aware of the impersonal care and abuse suffered by children in orphanages, and in 1909 the White House Conference on the Care of Dependent Children convened to address the problem of child welfare.<sup>58</sup> The most desirable situation for rearing children was “home life,” and asylums were assumed to be an inherently inferior method of caring for poor children.<sup>59</sup> In the early twentieth century, public pensions developed to help widows and destitute mothers care for their own children despite their family’s poverty.<sup>60</sup>

Prior to the state providing poor mothers cash and goods to provide for their families, various charities gave “outdoor relief” to families throughout the nineteenth century.<sup>61</sup> There were some Jewish charities that recommended subsidies to poor families in which both parents were alive, but the emphasis remained on widows and deserted wives with children.<sup>62</sup> The prevalent belief was that children should be maintained with destitute parents but removed from those who were morally unfit to care for them.<sup>63</sup> In practice, it was difficult to separate who should receive aid from the “undeserved.”<sup>64</sup>

During the Great Depression, there were over 10,000 homeless children, and thousands of them were relocated to Christian families in the Midwest through Children’s Aid Society of New York, a private

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55. HACSI, *supra* note 12, at 2.

56. *Id.* at 5.

57. *Id.* at 3.

58. ASHBY, *supra* note 53, at 79.

59. See HACSI, *supra* note 12, at 38.

60. *Id.* at 4.

61. *Id.* at 42.

62. *Id.*

63. *Id.* at 42–43.

64. *Id.* at 42.

organization started by Charles Loring Brace.<sup>65</sup> The “orphan trains” transported carloads of children to live with farm families, and the “placing-out” movement changed the lives of 200,000 youngsters over seventy-five years.<sup>66</sup> Brace’s desire to remove children from the streets was grounded in the prevention of crime, such as theft and prostitution, and he was also an outspoken critic of orphan asylums.<sup>67</sup> Child labor was still very common during this period of time, so Brace argued for the homeless children to move to rural America so that they could become apprentices and hired hands for farmers. In some instances these children were placed in loving homes with supportive foster families, while others were treated like indentured servants.<sup>68</sup>

Foster care and institutions evolved out of the criticisms about orphan asylums during the nineteenth century. The most frequent critique of orphan asylums were that they created an “institutional” type of child who lacked individuality, and they accepted children too easily as well as held children too long.<sup>69</sup> Another negative assessment related to how orphan asylums were funded. While some child welfare reformers embraced the idea of public responsibility for dependent children, others rejected the use of public funding to support religious institutions.<sup>70</sup>

A consistent theme among the public regarding the status of the destitute was that they were to blame for their own poverty.<sup>71</sup> They were often stigmatized; orphans were viewed as innocents deserving of aid while poor parents were unworthy of aid.<sup>72</sup> This harsh attitude toward poor parents encouraged the institutionalization of children by promoting the breakup of poor families, and even if the parents’ economic situation improved, poor parents were viewed as immoral and unfit.<sup>73</sup>

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65. Rebecca S. Trammell, *Orphan Train Myths and Legal Reality*, MODERN AM., Fall 2009, at 3, available at <http://www.wcl.american.edu/modernamerican/documents/Trammell.pdf>.

66. ASHBY, *supra* note 53, at 35, 37.

67. HASCI, *supra* note 12, at 159.

68. See *The Orphan Trains* (PBS television broadcast 1995).

69. HASCI, *supra* note 12, at 159–60.

70. See *id.* at 160.

71. See *id.* at 60–61.

72. *Id.*

73. *Id.* at 62 (though there were many asylum managers who disagreed with this harsh view and saw poor parents as unfortunate rather than depraved, and returned children to parents once their health or economic situation improved).

Various legal scholars have set forth the idea that family law as a whole is based upon a system of economic privilege and caste. Jean Koh Peters sets forth three systems that support the structure of U.S. family law developed in the early 16th and 17th centuries.<sup>74</sup> Peters identifies 1) the protectionism for wealthy families, 2) state intervention in poor families, and 3) prohibition against black family formation prior to the Civil War.<sup>75</sup> Peters draws from the historical analysis of Jacobus tenBroek regarding a dual-system of family law.<sup>76</sup> June Carbone and Naomi Cahn similarly expound on the triple system of family law, emphasizing marriage coupled with elitism, single parenthood linked with poverty and marginalization, and a middle class group of families that share traits of both the married elite and the single parent poor.<sup>77</sup> What is clear from the research of these scholars is that the legal system and society has not developed a solution that lifts poor families and their children from their economic status; in fact, the plight of poor families in America is just getting worse.

### *III. Poverty & Child Welfare*

Though poverty is not a reason to suspect neglect or abuse of a child, it has often been the basis for removing children from their parents.<sup>78</sup> “A child suffers from neglect when his or her basic needs are not meet, regardless of the circumstances leading to the inadequacy of care.”<sup>79</sup> While some state family laws have specific statutory language that associate

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74. See JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 545–59 (3rd ed. 2007).

75. *Id.*

76. See generally Jacobus tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 16 STAN. L. REV. 257 (1964) (stating that in California, family law is governed by two systems: the Elizabethan Poor Law and the AFDC on one hand, and the California codes and common law on the other).

77. Naomi R. Cahn and June Carbone, *The Triple System of Family Law*, 2013 MICH. ST. L. REV. 1185, 1186.

78. See Janet L. Wallace & Lisa R. Pruitt, *Judging Parents, Judging Place: Poverty, Rurality, and Termination of Parental Rights*, 77 MISSOURI L. REV. 95, 112 (2012); see also DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 35 (2002); see also Douglas J. Besharov, *Child Abuse Realities: Over-Reporting and Poverty*, 8 VA. J. SOC. POL'Y & L. 165, 183–85 (2000).

79. ANGELO P. GIARDINO & EILEEN R. GIARDINO, RECOGNITION OF CHILD ABUSE FOR THE MANDATED REPORTER 40 (3d ed. 2002).

neglect with culpability, most state social agencies view poverty as a risk factor for child neglect because it exacerbates the stressors that inhibit effective parenting and normal child development.<sup>80</sup> For over two decades, research has shown that poverty is a major contributing factor to child abuse and neglect, and receipt of welfare benefits doubles the risk that abuse or neglect allegations will be substantiated.<sup>81</sup> While some states forbid termination of parental rights solely on the basis of poverty, it is often difficult to determine when neglect is poverty-driven or intentional.<sup>82</sup> Public sentiment regarding parents who neglect their children correlates to the societal belief regarding the culture of poverty, which is that poverty is a moral and personal failure of the individual rather than a predicament of more complex origins such as institutional inequities and labor market imbalance.

Statistics show that homeless children are more at risk for removal than other housed low-income children.<sup>83</sup> Over one-third of homeless children have been involved in a child protection investigation, and almost one-fourth of all homeless children have been separated from their families.<sup>84</sup> While homelessness is not by itself a reason to remove children from homes, it is still a cause of initial separations and a barrier to reunification.<sup>85</sup> Various factors may account for this high percentage of children who are removed from their parents, including harsher judgment of the parental behaviors of homeless families, parenting in a “fishbowl”, and additional stressors for parents due to living in a homeless shelter.<sup>86</sup> Once removed, “countless children regularly remain in foster care simply because

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80. See *id.* at 40, 119; see also Wallace & Pruitt, *supra* note 78, at 113.

81. See U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-816, AFRICAN AMERICAN CHILDREN IN FOSTER CARE 4 (2007), available at <http://www.gao.gov/new.items/d07816.pdf>; see also Jessica Dixon, *The African-American Child Welfare Act: A Legal Redress for African-American Disproportionality in Child Protection Cases*, 10 BERKELEY J. AFR.-AM. L. & POL'Y 109, 115 (2008).

82. See Wallace & Pruitt, *supra* note 78, at 114.

83. See JUDITH SAMUELS ET AL., HOMELESS CHILDREN: UPDATE ON RESEARCH, POLICY, PROGRAMS AND OPPORTUNITIES 16 (2010) (noting that in New York City in 1988, 44% of the homeless mothers were separated from one or more children, compared to only 8% of continuously housed mothers. Almost ten years later, a study revealed an 11% difference in the number of homeless children placed in foster care and those in low-income households).

84. Bassuk, *supra* note 21, at 498.

85. SAMUELS ET AL., *supra* note 83, at 16.

86. See *id.* at 16–17 (noting that when homeless families reside in shelters, they must parent under the watchful eye of shelter and social service staff).

their parents are unable to secure adequate housing without assistance from the state.”<sup>87</sup>

Family homelessness can result in situational parental neglect of the children. Homeless children experience a lack of supervision by their parents, who are looking for work and housing, as well as medical and educational neglect.<sup>88</sup> In addition, many homeless mothers struggle with chronic depression and higher rates of post-traumatic stress disorder, which compromises their ability to parent effectively.<sup>89</sup> These emotional issues often stem from many traumatic experiences that are recurrent and severe, such as exposure to violence.<sup>90</sup> A study conducted by the National Center on Family Homelessness revealed that 92% of homeless mothers have experienced some form of severe physical or sexual abuse by family members or intimate partners.<sup>91</sup> Combining these prior interpersonal sufferings with the devastation of becoming homeless often results in risks to the healthy development and school readiness of young children. Traumatized parents have difficulty being responsive and sensitive to their children’s needs. If there is substance abuse, this would also exacerbate the risk of neglect for homeless children.

The impact of poverty and homelessness on children is complex and often life-long. Primary concerns include health issues, hunger and poor nutrition, developmental delays, psychological problems, and educational underachievement.<sup>92</sup> The psychological issues homeless children experience include depression, anxiety, and behavioral difficulties.<sup>93</sup> Multiple traumatic events that recur or are ongoing over a long period of time are defined as complex trauma.<sup>94</sup>

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87. MARTIN GUGGENHEIM, *WHAT’S WRONG WITH CHILDREN’S RIGHTS* 193 (2005).

88. Carol W. Williams, *Child Welfare Services and Homelessness: Issues in Policy, Philosophy, and Programs*, in *HOMELESS CHILDREN AND YOUTH: A NEW AMERICAN DILEMMA* 285, 290 (Julee H. Kryder-Coe et al. eds., 1991).

89. See Bassuk, *supra* note 21, at 497.

90. See *id.*

91. *Id.* (noting that 43% of homeless women reported being sexually abused by the age of twelve and 63% reported being physically assaulted by an intimate partner).

92. See Yvonne Rafferty & Marybeth Shinn, *The Impact of Homelessness on Children*, 46 AM. PSYCHOLOGIST, 1170, 1170 (1991).

93. See *id.* at 1173.

94. See Bassuk, *supra* note 21, at 499.

Family economic insecurity since the Great Recession has caused an increase in the child poverty rate from 18 percent to 22 percent.<sup>95</sup> Homeless children are subject to higher degrees of physical and psychological health problems because of the instability and danger of their environment. Many experience chronic stress, depression, and greater exposure to violence, specifically sexual violence, at an early age. Recent evidence from neuroscience suggests that the impact of toxic stress on young children can have both cumulative and latent effects on their health and cognitive and behavioral development.<sup>96</sup> The state has a responsibility to provide more comprehensive support for children who are homeless. This article argues that a family's chronic poverty along with a piecemeal or mediocre response of the state results in situational psychological neglect of children.

As Dasani's family experience highlights, the child welfare system is a present threat to her parents and siblings during their plight of homelessness. Though poverty is not a reason to suspect neglect or abuse of a child, it is often used as a barometer by the state to assess risk of abuse, and the law does not afford poor families as much protection as autonomous families enjoy.<sup>97</sup> Welfare reforms passed in the late twentieth century significantly changed the availability of support for poor families, and the changes created more opportunities for poor families to come into contact with child protective services.<sup>98</sup> Notwithstanding that children

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95. LISA DUBAY AND ELENA ZARABOZO, URBAN INSTITUTE, ECONOMIC INSECURITY IN CHILDREN'S LIVES: CHANGES OVER THE COURSE OF THE GREAT RECESSION 5 (2013), available at <http://urban.org/publications/412900.html>.

96. See *id.*

97. See ROBERTS, *supra* note 78, at 44–46; see also *Wyman v. James*, 400 U.S. 309, 326 (1971) (holding that a New York State Aid to Families with Dependent Children (AFDC) caseworker's home visit did not violate a mother's Fourth or Fourteenth Amendment rights). Justice Marshall in his dissent notes that the "appellants emphasized the need to enter AFDC homes to guard against welfare fraud and child abuse, both of which are felonies." *Id.* at 339 (Marshall, J., dissenting); see also Jill Hasday, *The Canon of Family Law*, 57 STAN. L. REV. 825, 893–96 (2004) (noting the ways by which Supreme Court jurisprudence is much more intrusive in its regulation of poor families on welfare than wealthier families and that the regulation resulted in limitations on the living arrangements of poor families and the ways poor families could support one another).

98. See Daan Braveman & Sarah Ramsey, *When Welfare Ends: Removing Children from the Home for Poverty Alone*, 70 TEMPLE L. REV. 447, 447 (1997) (noting that in 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act into law, which replaced the Aid to Families of Dependent Children ("AFDC") program with the Temporary Assistance to Needy Families ("TANF") program). TANF removed the

cannot be removed for “poverty alone,” children can be removed because of environmental neglect and other factors such as lack of medical care, insufficient, unsafe housing, and psychological feelings of helplessness and stress,<sup>99</sup> all of which are ultimately associated with homelessness.

### A. *The Color of Child Homelessness*

Poverty, homelessness and child welfare are often pieces to the same puzzle—and for a significant percentage of the homeless in America, there is a racial component that cannot be ignored. Over half of the children in shelters and transitional facilities are less than six years old and disproportionately African American and Native American.<sup>100</sup> African Americans make up disproportionate numbers of the chronically poor, homeless, and families involved in the foster care system.<sup>101</sup> The depth of the problems experienced by African American homeless families with children, who are comprised of mostly single women, goes deeper than the scope of this article. It is important to note, however, the impact of housing law and policy on the color of child homelessness.

As one scholar notes, “the story of African Americans is usually absent from the mainstream textbook study of homeless people.”<sup>102</sup> Race and poverty have been legally intertwined by slavery and institutional

entitlement to benefits and imposed time limits on eligibility for benefits and stringent work requirements. *Id.*; see also Naomi R. Cahn, *Children's Interests in Familial Context: Poverty, Foster Care, and Adoption*, 60 OHIO STATE L.J. 1189, 1199 (1999). Cahn notes that an estimated 3.8 million children would be affected by the limit on welfare receipt, and several requirements might cause children to be 1) left unattended because of a lack of good child care, 2) voluntary placed in foster care because of parent ineligibility for public welfare, and 3) removed from parent because of mandatory drug testing of TANF applicants.

99. See Cahn, *supra* note 98, at 1198–99 (noting that environmental neglect is broadly defined as a lack of adequate food, shelter or clothing); see also Braveman & Ramsey, *supra* note 98, at 460–61.

100. Bassuk, *supra* note 21, at 498.

101. See Martin Gilens, *The American News Media and Public Misperceptions of Race and Poverty*, in RACE, POVERTY, AND DOMESTIC POLICY 336, 337 (C. Michael Henry ed., 2004); Dixon, *supra* note 81, at 109–10; See generally Roberta Ann Johnson, *African Americans and Homelessness: Moving Through History*, 40 J. BLACK STUDIES 583 (2010).

102. See generally Roberta Ann Johnson, *African Americans and Homelessness: Moving Through History*, 40 J. BLACK STUDIES 583 (2010) (noting eight distinct historic time periods when there was significant black homelessness, including but not limited to the colonial period, Reconstruction, the black migration north, and the great depression years).



discrimination.<sup>103</sup> Historically, at least one million African American slaves experienced homelessness after the Civil War ended with emancipation in 1865.<sup>104</sup> Though African American slaves were central to the establishment of modern American wealth, they never benefitted from three and a half centuries of unpaid labor.<sup>105</sup> The passage of the Thirteenth Amendment abolishing slavery, and the Fourteenth and Fifteenth Amendments, which established the right to citizenship, equal protection, due process and the right to vote for African American men, did not ensure liberty for the former slaves.<sup>106</sup> Jim Crow laws in both the North and South further burrowed the belief of white supremacy into the fiber of America.<sup>107</sup> African Americans have had unequal access to quality housing, employment, and education, which makes it more likely for them as a

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103. See Dawinder S. Sidhu, *The Unconstitutionality of Urban Poverty*, 62 DEPAUL L. REV. 1, 6–14, 49–50 (2012); Bassuk et al., *supra* note 2, at 81–82 (noting that racial disparities in many areas of American life are made worse by institutional racism).

104. Johnson, *supra* note 101, at 587.

105. See DANIEL JACOBY, *LABORING FOR FREEDOM: A NEW LOOK AT THE HISTORY OF LABOR IN AMERICA* 25–27 (1998) (noting how the brutal institution of slavery was used to secure a labor force); EDWARD E. BAPTIST, *THE HALF HAS NEVER BEEN TOLD: SLAVERY AND THE MAKING OF AMERICAN CAPITALISM*, xxi–xxii, 407–13 (2014) (noting southern America's economy based on world cotton trade was the foundation of the nation's wealth and power as a global leader during the eighteenth and nineteenth centuries). After slavery ended, the status of African-Americans did not change because aside from their freedom, the U.S. did not fulfill the promise of land to them, and they were forced by federal Freedman's Bureau agents to enter a system of sharecropping which bound them contractually to pay a share of the cotton crop to former enslavers in exchange for a plot of land. *Id.* at 407–08. The pay for sharecropping was too low to live off of, so goods were advanced on credit at high interest rates to African-Americans, and they were often trapped in permanent debt. *Id.* at 408.

106. See JACOBY, *supra* note 105, at 55–56 (noting how the federal government only gave Freedman (former slaves) their liberty without a redistribution of slave owners' land and how "black codes" enacted by southern states re-imposed slavery via agricultural labor (sharecropping contracts) and criminalized vagrancy).

107. See RICHARD WORMSER, *THE RISE AND FALL OF JIM CROW*, xi–xii (2003) (noting that Jim Crow was a minstrel character of a black man created by a white man, Thomas Rice, to amuse white audiences). The character became synonymous with a complex system of racial laws and customs in the south that established segregation in public accommodations and schools, deprivation of the right to vote, and subjection to verbal abuse, discrimination and violence without redress in courts. *Id.* at xi. "Most Northern whites shared with Southern whites the belief in the innate superiority of the white 'race' over the black." *Id.*; see also Cheryl Nelson Butler, *Blackness as Delinquency*, 90 WASH. U. L. REV. 1339, 1344–45 (2013) (noting the demoralizing effect of Jim Crow segregation on black people, especially youth, and how forced segregation exacerbated racial stereotypes and myths of black people).

whole to have fewer resources to fall back on in emergency situations, and as a result, more likely to experience homelessness.<sup>108</sup>

A poignant article by journalist Ta-Nehisi Coates, *The Case for Reparations*, covers some of the housing discrimination and racist laws and policies that prevented African American families from purchasing property in the U.S. and restricted them to living in certain areas during the twentieth century.<sup>109</sup> Sociologist Douglas Massey refers to these areas as highly segregated, with a weak tax base, poor municipal services, and a high level of debt.<sup>110</sup> These negative factors, along with high population density and higher crime rates, directly affect the quality of public education in these communities.<sup>111</sup> Often exalted as the most promising legitimate exit out of poverty (as compared with the illegal drug trade and other property crimes), improving education in poor, segregated communities has suffered from political, bureaucratic, and financial hurdles.<sup>112</sup>

In addition to housing discrimination that prevented African-Americans from accumulating wealth via property ownership, there are also lesser known property laws and customs that dispossessed thousands of descendants of former slaves from valuable property in the south.<sup>113</sup>

108. See INST. FOR CHILDREN, POVERTY & HOMELESSNESS, AMERICAN ALMANAC: THE STRUGGLES OF HOMELESS MINORITY FAMILIES 1 (2013), available at [http://www.icphusa.org/PDF/americanalmanac/Almanac\\_Issue\\_Minority%20Families.pdf](http://www.icphusa.org/PDF/americanalmanac/Almanac_Issue_Minority%20Families.pdf). (“Throughout U.S. history, housing discrimination based on race has been ever-present, both in the form of official government policies and societal practice.”).

109. Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC MONTHLY, May 21, 2014, available at <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631/>.

110. Douglas S. Massey, *The New Geography of Inequality in Urban America*, in RACE, POVERTY AND DOMESTIC POL’Y 177 (C. Michael Henry ed., 2004).

111. *Id.* at 177, 182.

112. See JAMES T. PATTERSON, FREEDOM IS NOT ENOUGH: THE MOYNIHAN REPORT AND AMERICA’S STRUGGLE OVER BLACK FAMILY LIFE FROM LBJ TO OBAMA 208–11 (2010) (noting high poverty rates of black children and increased arrests and convictions of young black men for possession or abuse of drugs). Also, Patterson notes that Presidents Lyndon Johnson and Barack Obama endorsed education as the “only valid passport from poverty” and the strongest weapon against inequality, respectively. *Id.* And that closing the large gaps in standardized testing between blacks and whites involve much more than getting black children into better schools—family income, home environment, and parental education, experience, and time are factors in providing the proper resources to black children for improved educational success. *Id.*

113. See Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505, 507–08 (2001) (noting that the forced

Professor Thomas Mitchell has conducted an empirical study of black land loss in the south,<sup>114</sup> and as a result of his research and findings, there is a clearer picture of the depth of lost wealth black landowners experienced by forced sale of their property.<sup>115</sup> Black landownership has been undercut since Reconstruction, with the latest research data revealing that black home ownership has declined sharply due to losses from the subprime mortgage lending crisis during the Great Recession.<sup>116</sup>

While African Americans do make up a disproportionate number of homeless Americans (especially in major cities) compared to their representation in the general U.S. population, the majority of the homeless and chronic poor are white.<sup>117</sup> Historically, the news media and politicians have created public misperceptions about race and poverty.<sup>118</sup> Even though African Americans only account for 29% of America's poor, "the public substantially overestimates the percentage of blacks among the poor."<sup>119</sup> This exaggerated association of race and poverty reflects negative stereotypes held by the public and increases white Americans' opposition to welfare.<sup>120</sup> President Ronald Reagan politicized the term "welfare queen"

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partition sale of black-owned property owned under the tenancy in common form of ownership resulted in many rural black property owners losing their property).

114. Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557, 604–05, 608–12 (2005) (explaining the goals and methodology of a three-year Ford Foundation grant to conduct empirical work on black land loss in the south).

115. Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 ALA. L. REV. 1, 18–20 (2014) (noting that forced partition sales result in serious economic harm because property is purchased at well below market value).

116. Nathalie Baptiste, *Them That's Got Shall Get*, THE AM. PROSPECT LONGFORM, October 13, 2014, <http://prospect.org/article/staggering-loss-black-wealth-due-subprime-scandal-continues-unabated> (noting that 240,000 blacks lost their homes during the Great Recession, and many were purposefully targeted by banks for subprime mortgage loans with high interest rates).

117. See Gilens, *supra* note 111, at 337 (noting that African Americans account for 29% of America's poor).

118. See *id.* at 338–56 (noting that negative perceptions of blacks play a dominant role in shaping the public's attitudes toward welfare); see also Ann Cammett, *Deadbeat Dads and Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J.L. & SOC. JUST. 233, 233–40 (2014) (noting how conservative theorists and policymakers have used stigmatizing metaphors in order to reduce necessary resources the poor by demonizing poor black mothers as undeserving beneficiaries of welfare and poor black fathers as irresponsible parents unwilling to pay child support).

119. Gilens, *supra* note 101, at 516.

120. *Id.*

during his 1976 re-election campaign by overstating a case of welfare fraud of an African American woman.<sup>121</sup> It helped to stoke fear and anger that dependent minorities were taking advantage of government assistance. Generating the belief that this type of person does not need or deserve aid from the state, this term continues to inject race and gender into the definition of poverty in America.<sup>122</sup>

The historical treatment of African-Americans coupled with the continued stereotypes about blacks on welfare inhibit large segments of the country from supporting increases in federal state aid to poor families. Debate regarding inequality and poverty is front and center with the increased numbers of homeless children and families. Focus on individual responsibility and identities reinforce the racial constructs of the past without allowing for a meaningful dialogue regarding how the state and institutions created the vast inequity among the affluent and poor.

#### IV. Theories on Poverty & Homelessness

There has been an increasing focus on the subject of poverty from a variety of scholars and policy makers, perhaps because of the growing underclass in America and around the globe.<sup>123</sup> It is also the fiftieth anniversary of President Lyndon Johnson's "War on Poverty," and there

121. Ian Haney-Lopez, *The Racism at the Heart of the Reagan Presidency*, SALON (Jan. 11, 2014), [http://www.salon.com/2014/01/11/the\\_racism\\_at\\_the\\_heart\\_of\\_the\\_reagan\\_presidency/](http://www.salon.com/2014/01/11/the_racism_at_the_heart_of_the_reagan_presidency/).

122. See Cammett, *supra* note 118, at 243–46 (noting how the metaphor of the Welfare Queen introduced by President Reagan represents the stereotype of a black woman who commits welfare fraud and is undeserving of state aid because she is living a lavish lifestyle at the taxpayers' expense). The trope continues beyond Reagan as a narrative that reinforces the majority culture's belief that most people who receive welfare are black, and blacks are less dedicated to working than other Americans. *Id.* at 245; see also JOEL F. HANDLER & YEHESKEL HASENFELD, BLAME WELFARE, IGNORE POVERTY AND INEQUALITY 158–60, 174–77 (2014); Michele Estrin Gilman, *The Return of the Welfare Queen*, 22 AM. U. J. GENDER SOC. POL'Y & L. 247, 247–48, 256–66 (2014) (exploring the legacy of the Welfare Queen in the 2012 election and how Mitt Romney used the Welfare Queen to appeal to white, working class voters who dislike government assistance for the "undeserving" poor).

123. See PEADAR KIRBY, VULNERABILITY AND VIOLENCE 14–19 (2006); THE STANFORD CENTER ON POVERTY AND EQUALITY, *supra* note 31; see also Dean Paton, *Poverty Is Not Inevitable: What We Can Do Now to Turn Things Around*, YES! MAGAZINE (Aug 21, 2014), available at <http://www.yesmagazine.org/issues/the-end-of-poverty/why-poverty-is-not-inevitable>; see also Thomas B. Edsall, *What Makes People Poor?*, N.Y. TIMES (Sept. 2, 2014), [http://www.nytimes.com/2014/09/03/opinion/what-makes-people-poor.html?\\_r=0](http://www.nytimes.com/2014/09/03/opinion/what-makes-people-poor.html?_r=0).

has been much reflection about how far we have come in reducing inequality as a nation.<sup>124</sup> With respect to family and children's law, prominent scholars have written thought-provoking books about how economic inequality among families has negatively affected marriage, rearing of children, and work-life balance for both men and women.<sup>125</sup>

Homelessness is often a temporary situation for millions of people, but for others it is a result of chronic poverty and can be long lasting or recurring over a number of years.<sup>126</sup> When considering the existence of poverty and the state and/or societal obligation to the poor, it is important to analyze the theories on poverty that support the law and public policy affecting the poor. Family law scholar Barbara Stark's article *Theories of Poverty: The Poverty of Theory* highlights several philosophers' perspectives on poverty, including Immanuel Kant, Jean-Jacques Rousseau, Thomas Paine, and Jeremy Bentham.<sup>127</sup>

Immanuel Kant propounds that everyone has an obligation to help the poor since the "maxim of self-interest contradicts itself when it is made universal law."<sup>128</sup> Kant states that the ethical law of perfection, "love your

124. See John Light, *The War on Poverty at 50: Did it Work?*, MOYERS & CO. (Jan. 8, 2014), <http://billmoyers.com/2014/01/08/the-war-on-poverty-at-50-did-it-work/> (noting that a Columbia University analysis shows that Johnson-era safety net programs did work by reducing the poverty rate from 26% in 1967 to 16% in 2012 and that existing safety net programs play an important role in lifting children out of poverty). A separate study by the Center for American Progress analyzed new polling regarding American attitudes toward poverty, revealing that nearly 80% of people agreed that the primary reason so many people are living in poverty today is because our economy fails to produce enough jobs paying decent wages; see also Francine J. Lipman & Dawn Davis, *Heal the Suffering Children: Fifty Years After the Declaration of War on Poverty*, 34 B.C. J.L. & SOC. JUST. 311, 312–21 (2014).

125. See generally JUNE CARBONE & NAOMI CAHN, *MARRIAGE AND MARKETS* (2014); CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS* (2014); see also MAX EICHNER, *THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA'S POLITICAL IDEALS* (2010); see also JOAN C. WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER* (2012); see also MARGARET BRINIG, *FAMILY, LAW, AND COMMUNITY: SUPPORTING THE COVENANT* (2010).

126. See AMERICAN PSYCHOLOGICAL ASS'N, *HELPING PEOPLE WITHOUT HOMES: THE ROLE OF PSYCHOLOGISTS AND RECOMMENDATIONS TO ADVANCE RESEARCH, TRAINING, PRACTICE AND POLICY* 5 (2010), available at <http://www.apa.org/pi/ses/resources/publications/end-homelessness.aspx>.

127. See generally Barbara Stark, *Theories of Poverty: The Poverty of Theory*, BYU L. REV. 381 (2009).

128. *Id.* at 396 (citing IMMANUEL KANT, *The Doctrine of Virtue*, in *THE METAPHYSICS OF MORALS* 247 (M.J. Gregor trans., 1991)).

neighbor as yourself” is the duty of all men toward one another.<sup>129</sup> He asserts that there is a moral duty to help alleviate poverty, whatever the cause of poverty is. His moral argument is appealing because it is not coercive and the benefactor is made virtuous through giving.<sup>130</sup>

Jean-Jacques Rousseau and Thomas Paine believed that poverty was the result of injustice.<sup>131</sup> Paine set forth that the legal system of property dispossessed more than half of the inhabitants of every nation without providing for them, thereby creating a species of poverty and wretchedness that did not exist before.<sup>132</sup> Rousseau believed that moral inequality is contrary to natural right whenever it is not exactly proportioned to physical inequality, specifically noting that “it is manifestly contrary to the law of nature . . . that a handful of people be glutted with superfluities while the starving magnitude lacks necessities.”<sup>133</sup>

Jeremy Bentham argued that the focus on poverty should be on actual poverty rather than “justice” because he believed that “rights” were a pointless distraction.<sup>134</sup> He also asserted that individuals would be concerned about collective well-being since the individual’s happiness depends upon the aggregate happiness of his or her group.<sup>135</sup> This principle of utility set forth that poverty should be addressed by the state because it was not just painful for the poor, but painful for the larger society of which they are a part.<sup>136</sup>

From a legal standpoint, the U.S. approach to poverty and the plight of poor people has been criticized for many reasons, one of which is the rhetoric that the poor are the cause of their own poverty, and the problem of

129. IMMANUEL KANT, *THE METAPHYSICS OF MORALS* 245 (Mary J. Gregor trans., Cambridge Univ. Press 1991).

130. *Id.* at 243 (“So we shall acknowledge that we are under obligation to help a poor man; but since the favor we do implies that his well-being depends on our generosity, and this humbles him, it is our duty to behave as if our help is either merely what is due him or but a slight service of love . . .”).

131. Stark, *supra* note 127, at 399–400.

132. See PAINE, *supra* note 8, at 7.

133. JEAN-JACQUES ROUSSEAU, *Discourse on the Origin, and the Foundations of Inequality Among Men*, in *THE MAJOR POLITICAL WRITINGS OF JEAN-JACQUES ROUSSEAU* 117 (John T. Scott, trans. ed., 2012).

134. JEREMY BENTHAM, *INTRODUCTION TO PRINCIPLES OF MORALS AND LEGISLATION* 224–25 (1907).

135. *Id.* at 312.

136. See Stark, *supra* note 127, at 402.

poverty is beyond solution.<sup>137</sup> Neither the federal government nor state governments have a federal constitutional duty to remove children from poverty.<sup>138</sup> As homelessness has increased around the country, local governments have used criminal laws to address the presence of homeless people in public places by restricting begging, sleeping, and sitting in public places.<sup>139</sup> The provision of shelter alone or a right to shelter has not curbed the tide of homelessness.<sup>140</sup> Indeed, Professor Starks concluded that the three basic conceptions that drive liberal approaches to poverty—justice, morality, and utility—fall short of fundamental ambivalence about poverty.<sup>141</sup>

### *A. Vulnerability Theory & Child Homelessness*

An exploration of useful concepts to combat child homelessness reveals that vulnerability theory is valuable because it seeks to transform the poverty dialogue from the consideration of factors that lead to homelessness to the common needs of all people. Vulnerability is a characteristic of human existence that carries with it the imminent or ever-present possibility of harm, injury, and misfortune.<sup>142</sup> Scholar Martha Fineman proffers vulnerability theory to reconsider legal equality discourse that focuses on identities of social categories such as race, national origin, gender and ethnicity, for anti-discriminatory protection.<sup>143</sup> A variety of social justice problems exist, including poverty and poor educational systems, whereby government responsibility is limited by discrimination doctrine.<sup>144</sup> Vulnerability theory seeks to transcend identity categories in

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137. See Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499, 1499 (1991). Ross argues that the dual rhetoric of the moral weakness of the poor and judicial helplessness fit the need of the Supreme Court to minimize the constitutional bases for intervention on behalf of the poor. *Id.* at 1500–02.

138. Sarah Ramsey & Daan Braveman, “*Let Them Starve*”: *Government’s Obligation to Children in Poverty*, 68 TEMP. L. REV. 1607, 1622 (1995).

139. See Maria Foscarinis, *Downward Spiral: Homelessness and Its Criminalization*, 14 YALE L. & POL’Y REV. 1, 2 (1996).

140. See *id.* at 3.

141. See Starks, *supra* note 127, at 407–10.

142. See MARTHA FINEMAN, *Equality, Autonomy, and the Vulnerable Subject in Law and Politics*, in VULNERABILITY: REFLECTIONS ON A NEW ETHICAL FOUNDATION FOR LAW AND POLITICS 13, 20 (Martha Albertson Fineman & Anna Grear eds., 2013).

143. See *id.* at 14–15.

144. See *id.* at 15–16.

order to shed light on institutional, social, and cultural forces that distribute privilege and disadvantage via various systems.<sup>145</sup> The concept of vulnerability is also linked to dependency, which is a natural and inevitable cycle of the human condition.<sup>146</sup>

Vulnerability theory enlightens the public response to poverty and homelessness in that it illustrates how common American expressions of “individual responsibility” and “autonomy” cast a stigmatizing and punitive label on those who cannot provide for themselves or rely on government or private assistance to live.<sup>147</sup> Poverty is a status-based characteristic that obscures the similarities between the haves and the have-nots. In many instances, homelessness creates an identity of a vulnerable subpopulation of poor that is viewed as outside the norm or deviant, while those who are insulated by law, public policy and privilege perceive that they are invulnerable.<sup>148</sup> Fineman argues that everyone is vulnerable to accidents, natural disasters, crime, illness, injury or emergencies, and this constant universal aspect of human frailty supports the notion of a “responsive state,” which provides the means and mechanisms for individuals to accumulate resilience and resources to confront their circumstance.<sup>149</sup>

Vulnerability theory recognizes that human beings and society develop assets that produce resilience in the face of adversity. A world survey called “Voices of the Poor” gathered the views of over 60,000 poor men and women in 60 countries.<sup>150</sup> The people who participated did not refer to poverty in the conventional view in that they did not define it as lack of income. Instead they emphasized the importance of cultural identity and social belonging, stating that powerlessness, voicelessness, dependency, shame, and humiliation were important aspects of being poor.<sup>151</sup> There were four kinds of assets mentioned by the poor, including physical assets (land and material belongings), human assets (education and training, health, and ability to work), social assets (belonging to social networks like family, neighbors, and associations), and environmental assets (grass, trees,

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145. *See id.*

146. *See* Martha Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J. L. & FEMINISM 1 (2008).

147. *See* FINEMAN, *supra* note 142, at 16.

148. *See id.*

149. *Id.* at 16, 19.

150. KIRBY, *supra* note 123, at 18.

151. *See id.*



water and non-timber products).<sup>152</sup> The poor linked their lack of these assets and their vulnerability to risks.<sup>153</sup>

Homeless children are vulnerable in a host of ways, and their vulnerability is apparent in several settings. In analyzing their plight, it can be assessed that the destabilization of homelessness causes a disconnection for children with much of their environment. They lack all four of the aforementioned assets. Within their “home” environment of the family shelter, children are the most vulnerable members of that community, often the victim of sexual assault, hunger, and sometimes parental neglect. If they are out in the street with their family, children are even more vulnerable and more likely to be removed from their parents by the state because they cannot provide the children with the basic necessities of food, shelter, and clothes.

While the basic necessities are vital for children, of more value is the daily connection children share with their parents and siblings. Being separated from one another and placed with strangers is emotionally traumatic for children, and many exhibit depression, aggression and withdrawal, while others develop severe attachment disorders.<sup>154</sup> The school environment is sometimes a refuge for children, as illustrated by Dasani’s experience in an educational setting where the principal and key teachers make special efforts and concessions to support Dasani, her mother, and her siblings. Dasani’s school offers at least two meals for the day and a semi-safe place for her and her siblings to learn and grow.<sup>155</sup> However, challenges such as bullying and violent classmates, lack of sleep and preparation, and lack of funds for extra-curricular activities are ever-present hurdles in the educational development of homeless children.<sup>156</sup> There is usually very little free green space for children to play or enjoy their childhood because of safety issues within homeless shelters, the neighborhoods in which they attend school, and the public spaces that they inhabit.<sup>157</sup>

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152. *Id.*

153. *See id.*

154. Sandra Stukes Chipungu & Tricia B. Bent-Goodley, *Meeting the Challenges of Contemporary Foster Care*, *FUTURE CHILD*, Winter 2004, at 75, 84–86.

155. Elliott, *supra* note 6.

156. *See id.*

157. *See id.*

While it can be argued and is often true that resilience can be the result of overcoming difficult circumstances, individual failure or success “[is] socially structured and intricately dependent on an individual’s interactions within the institutions and political structures society has constructed.”<sup>158</sup> The inevitable dependence of individuals on private and public institutions and the power of resource-giving, state-constructed institutions like the family, corporations, schools and financial institutions has at least three implications according to vulnerability theory.<sup>159</sup> First, the state should accept some responsibility to individuals and entities regarding the effects and operation of the institutions it creates and maintains.<sup>160</sup> For example, in the same way that the state provided financial bailouts for large corporations during the Great Recession, it should have provided financial assistance for individual mortgage holders because both were vulnerable as a result of the market crash.<sup>161</sup> Over 1.2 million households were lost from 2005-2009, and as mentioned earlier, the Great Recession is one of the main reasons for the increase in child homelessness.<sup>162</sup> Second, the state is also vulnerable to catastrophe in that it can be corrupted by both inside and outside pressures which reduce its ability to operate effectively as a fair democracy.<sup>163</sup> Finally, solving the poverty issue requires involvement of the state, participation of individuals, and relationships between the citizen and various agencies and entities that comprise the state.<sup>164</sup>

### *B. Principle of Subsidiarity*

The principle of subsidiarity is an organizing principle that promotes the idea that matters should be handled by the smallest, lowest, or least

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158. See FINEMAN, *supra* note 142, at 24.

159. See *id.* at 25–26.

160. See *id.* at 25.

161. See *id.* at 25–26.

162. See John W. Schoen, *Study: 1.2 Million households lost to recession*, NBC NEWS (Apr. 8, 2010, 9:53 AM), [http://www.nbcnews.com/id/36231884/ns/business-eye\\_on\\_the\\_economy/t/study-million-households-lost-recession/#.VIhtKDHF\\_kU](http://www.nbcnews.com/id/36231884/ns/business-eye_on_the_economy/t/study-million-households-lost-recession/#.VIhtKDHF_kU); see also INGRID GOULD ELLEN & SAMUEL DASTROP, HOUSING AND THE GREAT RECESSION 5 (October 2012), available at <http://furmancenter.org/files/publications/HousingandtheGreatRecession.pdf> (noting that homelessness increased 30% during the Great Recession).

163. *Id.* at 26.

164. *Id.*

centralized competent authority.<sup>165</sup> It “derives primarily from the natural law tradition and Roman Catholic social teaching.”<sup>166</sup> The theory has been utilized as the foundation of federalism and nation-state building for European countries.<sup>167</sup>

There are two fundamental ideas contained within the general theory of subsidiarity: the principle of noninterference and the principle of assistance.<sup>168</sup> The principle of noninterference sets forth that states should not interfere with the rights of the individual or the activities of lesser social groupings when they can cope with their own problems.<sup>169</sup> The principle of assistance recognizes the need for the state to render aid whenever the individual or lesser groupings are incapable of coping on their own.<sup>170</sup> These two sub-principles both limit and empower the state in that while the government has a duty to respect the integrity of social groups, it also is allowed to provide remedies for weaknesses of social groups.<sup>171</sup>

The political interpretation of subsidiarity supports political autonomy; however, “scholars debate whether the theory is an element of social, religious or political philosophy.”<sup>172</sup> The Catholic social theory of subsidiarity supports individual empowerment alongside an active government that fosters the conditions necessary for achieving independence.<sup>173</sup> It supports a partnership between families and the state whereby communities or institutions link the individual to society in a way that gives people greater freedom and power to act.<sup>174</sup> In the societal

165. Jessica Dixon Weaver, *The Principle of Subsidiarity Applied: Reforming the Legal Framework to Capture the Psychological Abuse of Children*, 18 VA. J. SOC. POL’Y & L. 247, 286 (2011) (citing ANTONIO ESTELLA DE NORIEGA, *THE EU PRINCIPLE OF SUBSIDIARITY AND ITS CRITIQUE* 80 (Oxford Univ. Press 2002)).

166. Robert A. Sirico, *Subsidiarity, Society, and Entitlements: Understanding and Application*, 11 NOTRE DAME J.L. ETHICS & PUB. POL’Y 549, 549 (1997).

167. See John W. Bridge, *Constitutions, Powers and the Doctrine of Subsidiarity*, 31 BRACTON L.J. 49, 49 (1999).

168. *Id.* at 50.

169. *Id.*

170. *Id.*

171. Dixon Weaver, *supra* note 165, at 289 (citing Kyle Duncan, *Subsidiarity and Religious Establishments in the United States Constitution*, 52 VILL. L. REV. 67, 67 (2007)).

172. *Id.* at 286 (citing Joseph A. Komonchak, *Subsidiarity in the Church: The State of the Question*, 48 THE JURIST 298, 298 n.1 (1988)).

173. Robert K. Vischer, *Subsidiarity as a Principle of Governance: Beyond Devolution*, 35 IND. L. REV. 103, 110 (2002).

174. Dixon Weaver, *supra* note 165, at 288.

context of the state response to child abuse and neglect, the principle of subsidiarity has been suggested as a way to shift the legal framework of child protective services and the role of the state in providing rehabilitative services to parents and children.<sup>175</sup>

The principle of subsidiarity addresses moral issues first; for example “it is right and proper that all children be cared for and immoral and unjust that even one be neglected.”<sup>176</sup> It appeals to private charity and the idea of decentralizing social responsibility to the states while leaving social power and authority primarily in communities.<sup>177</sup> It depends on common values and shared religious understandings among those of different faiths.<sup>178</sup> The principle of subsidiarity is critical of the welfare state and “entitlements,” and many on the far right utilize it to advance shrinkage of the government and greater dependence on private provision to the poor so that solutions can be creative and individualized.<sup>179</sup> A criticism of the subsidiarity principle is its heavy-handed approach regarding “moral flaws” of the poor. However, there is value in its emphasis on social justice, the moral obligation to intervene and act charitably, and duty and power of local state action within the community.

The concept of subsidiarity presents a hierarchy of social action and responsibility that begins with the smallest units in society, such as community associations, families and individuals.<sup>180</sup> These groups have the first responsibility for caring for their own needs and for others in their circle.<sup>181</sup> When these units “fail to function as they should, higher social structures, beginning with the closest level of government, are permitted to temporarily assume responsibility for those same functions” of the smaller

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175. See *id.* at 254.

176. Sirico, *supra* note 166, at 552, 555.

177. See *id.* at 573–75.

178. See *id.* at 558.

179. See *id.* at 564–65, 567; Vincent J. Miller, *Santorum and the Lobotomization of Subsidiarity*, AMERICA MAGAZINE (Jan. 8, 2012), <http://americamagazine.org/content/all-things/santorum-and-lobotomization-subsidiarity> (noting that former Pennsylvania Senator Rick Santorum embraces one side of the principle of subsidiarity, the side limiting government’s obligation to help). The article emphasizes that the complete concept of subsidiarity also focuses on limitations of the economic market, noting that it cannot be left to free competition of forces but must be subjected to and governed by the principles of social justice and social charity. *Id.*

180. See Sirico, *supra* note 166, at 550.

181. See *id.*

units.<sup>182</sup> The higher social structure can perform the job more effectively than the lower units, but only for a specific time period.<sup>183</sup> Ultimately the principle sets forth that the state derives its moral legitimacy from society and is subordinate to the society in service.<sup>184</sup> The purpose of the subsidiarity principle is to “establish a way of thinking about social life that has a high regard for the freedom of individuals, families, and communities; for creativity in responding to particular needs and situations; and for the best performance of social tasks like caring for society’s weakest members.”<sup>185</sup>

### *C. Brief Overview of Federal Response to Homelessness*

The current U.S. strategy to end homelessness was developed by the U.S. Interagency Council on Homelessness (USICH).<sup>186</sup> This council developed the HEARTH Act, which was enacted on May 20, 2009, as part of the Helping Families Save Their Homes Act.<sup>187</sup> Opening Doors, the report released in June of 2010, sets forth goals of ending chronic homelessness and homelessness among veterans within the next five years, and ending homelessness for families, youth, and children within the next ten years.<sup>188</sup> There are five overarching policies to assist in accomplishing these goals: 1) increasing leadership, collaboration, and civic engagement; 2) increasing access to stable and affordable housing; 3) increasing economic security; 4) improving health and stability; and 5) retooling the homeless crisis response.<sup>189</sup> Theories regarding poverty and child homelessness can be harnessed to address the last goal and change the way people think about these issues.

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182. *Id.* at 550–51.

183. *Id.*

184. *Id.* at 552.

185. *Id.* at 553.

186. LIBBY PERL ET AL., CONG. RESEARCH SERV., RL30442, HOMELESSNESS: TARGETED FEDERAL PROGRAMS AND RECENT LEGISLATION 24 (2014), available at <http://fas.org/sgp/crs/misc/RL30442.pdf>.

187. *Id.* See also Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, 123 Stat. 1631.

188. PERL, *supra* note 186, at 24–25.

189. *Id.* at 25.

There has been a 15.7% reduction in the number of chronically homeless individuals between 2010-2013, and a 24% decrease in veteran homelessness during the same time period.<sup>190</sup> Though Opening Doors 2013 reported progress toward reducing homelessness among families, this assessment relies upon the HUD Point-in-Time counting method, which as discussed earlier, poses serious questions regarding accuracy.<sup>191</sup> Family Connection, a plan released in February 2014, identifies four key tactics, including: 1) developing a centralized or coordinated entry system with the capacity to assess needs and connect families to targeted prevention assistance and temporary shelter as needed; 2) ensuring tailored interventions and assistance appropriate to the needs of families; 3) helping families connect to mainstream resources needed to sustain housing, achieve stability, and improve linkages to mainstream systems; and 4) developing and building upon evidence-based practices for serving families experiencing, and at-risk of experiencing, homelessness.<sup>192</sup>

“Housing first” or “rapid re-housing” is the approach used by HUD to help homeless households access housing as quickly as possible.<sup>193</sup> Interventions include permanent housing subsidies (vouchers), project-based transitional housing (temporary housing up to 24 months with intensive support services), community-based rapid rehousing (temporary rental assistance for 2-6 months with case management), and usual care in the emergency shelter system (with average stay of 30-90 days).<sup>194</sup> The impact of the interventions for homeless families is not yet known.<sup>195</sup>

#### *D. Amalgamating Theories*

One way to consider how vulnerability theory and the principle of subsidiarity could work together is to contemplate how communities could unify to help homeless families. Communities are a collective of private persons and families, state-sponsored institutions, such as schools, libraries, and parks, and corporations, both for-profit and non-profit. Our nation and the greater world have a rich history of communities coming together to

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190. Bassuk et al., *supra* note 2, at 84.

191. *See id.*

192. *Id.* at 84–85.

193. *Id.* at 86.

194. *See id.* at 86, 95.

195. *See id.* at 95.

benefit families and children when disaster strikes.<sup>196</sup> While poverty and homelessness are “circumstances” that most people who have the luxury of having a comfortable home tend to ignore, they are enormous, every day disasters for a growing number of children. Rather than remain complacent about or divided over the needs of poor families, communities should seek to inoculate families from reaching the point of homelessness as well as provide assistance for those who may have persistent housing needs.

In order to reinvigorate communities as a resource for poor families and families who fall into a crisis, three concepts should be developed, two of which are already being used by families and communities around the U.S. Home sharing, family foster care, and Community Courts are models that provide a framework for people within a community to help one another with the support of local government and businesses. The theory of vulnerability offers a perspective that allows housed persons and families to see themselves in the place of homeless persons and families. Similar to the old adage, “but for the grace of God, there go I,” vulnerability theory invites every being within communities to think of the treatment they would like to receive if some calamity befell them. This aligns in part with Kant’s moral duty to help alleviate poverty, but without the categorization of “deserved” or “undeserved” poor.

This perspective requires intimate contact and relationship building, which could be done through home sharing, a concept where typically older residents take in boarders consisting of young families or single women with children for an exchange of services. The boarders assist the older residents with daily house chores and activities, and the elderly homeowners provide free room and board. Both share collaboratively in raising any children and caring for each other. This concept is being practiced formally in over twenty states.<sup>197</sup> Usually, home sharing benefits the elderly or people with physical or mental disabilities who wish to continue living at home, and some programs are targeted to help the homeless locate housing.<sup>198</sup> While third party organizations do provide the

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196. See generally A DECADE OF DISASTERS, U.S. CHAMBER OF COMMERCE FOUND. (2010), available at <http://www.uschamberfoundation.org/report/decade-disasters>.

197. See *Shared Housing Program Directory*, NAT’L SHARED HOUSING RES. CTR., <http://nationalsharedhousing.org/program-directory/> (last visited Dec. 11, 2014) (listing U.S. states where there are match up services provided).

198. See Kirby Dunn, *The Future of Homesharing*, FED. RESERVE BANK OF BOSTON, Summer 2010, at 14, available at [https://www.bostonfed.org/commdev/c&b/2010/summer/Kirby\\_Dunn\\_HomeShare\\_Vermont.pdf](https://www.bostonfed.org/commdev/c&b/2010/summer/Kirby_Dunn_HomeShare_Vermont.pdf); see also Dallas “New Year ~ New You”

service of screening and matching homeowners with boarders, some people find homesharing situations on their own.<sup>199</sup>

The intergenerational homesharing model was created in the U.S. in the early 1980s, but there has been an 80% decrease in interest in homesharing programs since then.<sup>200</sup> The concept has been gaining popularity abroad, and many programs are used to provide students with housing as well as academic credit based on their homesharing experience.<sup>201</sup> Several homeshare programs serve international students and provide opportunities to practice a language. The funding and management of the programs ranges from full government sponsorship to for-profit services.<sup>202</sup> There are other “ways to promote the concept as a type of community service similar to AmeriCorps, or even as an alternative to military service.”<sup>203</sup>

A combination of private charity and government funding could provide a clearinghouse for connecting housed families with homeless families or families on the verge of being homeless. Currently there is no national organization that has committed to provide homesharing as a service, and there is no dedicated government funding.<sup>204</sup> Subsidiarity theory supports state involvement in order to provide licensing and guidelines to protect both the resident family and the boarder family from exploitation or abuse. For example, boarder families would have to be drug-free and sober, and there would need to be community health support in place to facilitate proper immunizations and mental health treatment for both sets of families. Additionally, resident owners would have to be financially stable with code-compliant homes. The benefits of home sharing include support for the elderly, better use of under-occupied homes, promoting intergenerational tolerance and understanding, and strengthening local communities.

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*Program Gives Clients Job Resources*, NAT'L SHARED HOUSING RES. CTR., <http://nationalsharedhousing.org/dallas-new-year-new-you-program-gives-clients-job-resources/> (last visited Dec. 11, 2014).

199. See Dunn, *supra* note 198.

200. *Id.* at 14–15.

201. See *id.* at 15.

202. See *id.*

203. *Id.* (noting that programs in Spain and Germany are associated with a university to provide student housing, a formal educational component with academic credit for the homesharing experience, and language practice).

204. See *id.* at 16.



As stated earlier, the child welfare system is often not appropriate to handle the issues that arise from child poverty and homelessness of accompanied children. Removing children from their parents or caregivers when they are already vulnerable makes matters worse for them. The principal of subsidiarity provides that the best help for families can come from the lowest level. Ordinarily the lowest level would be within private families, but poor families have typically exhausted the kindness and economic resources available within their own private families. There are ways, however, that public families could help the homeless through home sharing and fostering a family. Chronic poverty and persistent homelessness requires application of vulnerability theory to reach beyond the private family to the lowest level of the public assistance, local government and communities.

Communities have historically been the best resource for families, but civic engagement has declined with technology and electronic entertainment.<sup>205</sup> The concept of fostering a family would be similar to home sharing except the exchange of services would be between two similarly situated families, and the state would be responsible not only for licensing and screening, but also for providing funding to the foster family to account for the added cost of taking a family into their home. This idea is grounded in both the vulnerability and subsidiarity theories. One family would be dependent on another family for relationship and financial guidance, shelter, and daily help in raising children, while the state would be supporting the fostering family so that they could help the homeless family become independent.

The federal government spent \$6.7 billion in 2011 to sponsor over 400,000 children in foster care.<sup>206</sup> While the state would need to be mindful of creating another system that might be highly criticized, it could reduce the number of children in foster care by creating an option for entire families to be placed in foster care. A successful single mother and her extended family could help a struggling single mother without extended family or the necessary community supports to provide the basics for her

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205. See ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 228, 245–50 (2001).

206. EMILIE STOLZFUS, CONG. RESEARCH SERV., R42792, *CHILD WELFARE: A DETAILED OVERVIEW OF PROGRAM ELIGIBILITY AND FUNDING FOR FOSTER CARE, ADOPTION ASSISTANCE, AND KINSHIP GUARDIAN ASSISTANCE UNDER TITLE IV-E OF THE SOCIAL SECURITY ACT* 5 (2012), available at [http://greenbook.waysandmeans.house.gov/sites/greenbook.waysandmeans.house.gov/files/2012/documents/R42792\\_gb\\_2.pdf](http://greenbook.waysandmeans.house.gov/sites/greenbook.waysandmeans.house.gov/files/2012/documents/R42792_gb_2.pdf).

children. This concept aligns with Jeremy Bentham's theory about poverty in that it recognizes that poverty should be addressed by the state and that society should reorganize its legal and economic institutions in a way that deals with the issue.

Foster care for families would involve a specific time commitment from the foster family as well as significant screening to ensure that the homeless parent and her children would be in a safe environment and that the foster family would be protected from any mistreatment. The adults in the fostering family would serve as mentors for the homeless parent(s) and additional caregivers for the homeless children if necessary. Having a temporary but stable home with a support network would be an additional way for the state to tap into housing and also provide the tangible day-to-day assistance for homeless single-parents with young children. Participation in a foster family program would be voluntary and/or part of the differential response system in child protective services, which is a multi-tiered, alternative process for low-risk families designed to avoid formal investigation and removal of children for abuse and neglect by the state.<sup>207</sup>

While there would always be a risk that the state could intervene in a more adversarial way regarding custody of the children, appropriate training that accounts for cultural differences of the families and social workers would be necessary. In addition, the families could agree to resolve any differences using alternative dispute resolution processes such as family group conferencing.<sup>208</sup> Funding for fostering families could be a public-private partnership similar to how faith-based or charitable groups have foster care agencies that license foster families for children.

Community Courts in the U.S. are neighborhood-based courts that utilize the justice system to address low-level, "quality-of-life" crimes.<sup>209</sup>

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207. See Cynthia Godsoe, *Just Intervention: Differential Response in Child Protection*, 21 J.L. & POL'Y 73, 74–75 (2012) (noting that some states use the model to address the overinclusion of families in CPS for poverty related reasons while others use it to increase services—including basic needs like food, clothing, rent, and utility assistance—to at-risk families).

208. See Susan M. Chandler & Marilou Giovannucci, *Family Group Conferences: Transforming Traditional Child Welfare Policy and Practice*, 42 FAM. CT. REV. 216, 219–20 (2005) (noting that family group conferencing is a collaboration among family members, agencies, providers, and the state to establish a system of care and safety plan for children, or address harmful behavior in a non-adversarial way that focuses on healing and preventing future harm).

209. Sudip Kundu, *Privately Funded Courts and the Homeless: A Critical Look at*

They are problem-solving courts that combine social work with law through therapeutic jurisprudence, a theory grounded in identifying and treating the root causes of criminal conduct.<sup>210</sup> They are also Community Family Courts that handle family law problems such as substance abuse, domestic violence, and child custody.<sup>211</sup> Some of these courts are located within the community and others are within or near other city courthouses.<sup>212</sup> Various Community Courts have a combination of paid and volunteer Community Court staff and assigned local judges, attorneys, and social workers who comprise the team of professionals that operate them.<sup>213</sup>

Access to justice through the formal court system has steadily declined for a variety of reasons.<sup>214</sup> Community Courts offer a creative solution for indigent families to resolve differences in their own neighborhood instead of going through the formal legal system and creating negative public records that may eventually harm them. The formal court system does not usually garner trust or a sense of fairness among the poor, and a court intervention that causes family friction, added stress and anxiety to their lives should be avoided.

Use of community advocates and specially assigned judges to handle legal matters that arise among the chronic poor and homeless would save money and time for regular court systems. Community Courts could help resolve landlord-tenant issues, petty theft charges, juvenile delinquent charges, and child custody issues without litigation. This would be a win-win situation, but it could not be done without reallocation of certain

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*Community Courts*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 170, 170 (2005) (noting that “quality-of-life” crimes include public drinking, begging, illegal vending, shoplifting, vending, vandalism, etc.).

210. *Id.* at 172.

211. See Deborah Chase et al., *Community Courts and Family Law*, 2 J. CTR. FOR FAMILIES, CHILD. & CTS. 37, 47–52 (2000).

212. *Id.* at 39–43.

213. See *id.* at 40–49 (detailing various Community Court models across U.S.); Quintin Johnstone, *The Hartford Community Court: An Experiment That Has Succeeded*, 34 CONN. L. REV. 123, 127–28, 142–43 (2001) (noting the funding and staffing of two Community Courts in Connecticut).

214. See Jessica Dixon Weaver, *Overstepping Ethical Boundaries? Limitations on State Efforts to Provide Access to Justice in Family Courts*, 82 FORDHAM L. REV. 2705, 2709–10 (2014); see generally LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2009), [http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf).

support services to undergird the Community Court system and the options available to community judges to help resolve matters through alternative dispute resolution.

Community Courts have been in place in some cities for over a decade, and they are not without criticism. The main critique of Community Courts is that they often reinforce the same inequalities found within the formal court system. Many Community Courts currently deal with large numbers of homeless defendants because of the criminalization of behavior associated with homelessness.<sup>215</sup> There are complaints about the ineffectiveness of the courts because of the lack of appropriate services available to address the root causes of homelessness and the lack of housing and job training or services.<sup>216</sup> Mental health issues and substance abuse are also issues related to homelessness that generate criminal offenses. Social services for both are insufficient in some cities with Community Courts, and lack of resources make it difficult to offer therapeutic outcomes for homeless defendants.<sup>217</sup>

One way to reorder the way that Community Courts interface with homeless families is by adding the Foster Family and Homeshare services to the array of therapeutic resources available to them. The Community Court could still serve in its same capacity regarding resolution of low-level offenses, but it could also serve as the warehouse for these two new housing options for homeless families. With a steady home for six months to a year, the recurring crimes associated with homelessness would decrease at the same time homeless families would find shelter stability and support.

Finally, there is the issue of funding. Some Community Courts are funded by businesses that are interested in removing homeless people from their businesses and streets.<sup>218</sup> The subsidiarity principle would be useful to emphasize the primary principle of social justice and social charity. Community Courts should be funded by businesses that adhere to these principles, which could be set forth by the state as the standard for receipt of funds. As part of the responsive state, Community Courts should be focused on aiding vulnerable members of the neighborhood before

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215. Kundu, *supra* note 209, at 180.

216. *Id.*

217. *Id.* at 404–07.

218. *See id.* at 174–77 (noting that there are significant due process concerns when business communities and judges have ulterior motives in cases and use their financial influence to affect the process and/or outcome of cases).

embracing financial freedoms of powerful institutions that will only serve to widen the inequality gap.

### *V. Conclusion*

Imagining solutions to child homelessness requires thinking beyond child welfare. Our current system of child welfare was built on the premise that poor children needed to be rescued from their morally unfit parents. Still today poverty influences whether children will be removed from their parents. With the number of homeless children at unprecedented numbers in the U.S., it is time to galvanize the community and state to be responsive during their time of need.

Families need help at both the macro- and micro-level. When reviewing two of the most influential books on homelessness within the last thirty years, world-renowned sociologist Ram Cnaan noted that the lack of impetus on the part of the federal government to address the issue of homelessness has more to do with a lack of theoretical framework to convince those who can effectively intervene when it is necessary to do so.<sup>219</sup> This article analyzes how the principle of subsidiarity and the theory of vulnerability can work together to provide housing and community support for families and children outside of the formal court system. The combination of local community assistance via private charities and a responsive state centered on the principle of social justice and equality would yield much different results than our current federal approach to homelessness. Recognition of universal vulnerability would help individuals, institutions, and the state accept the charge to offer aid to the millions of homeless families and children in our wealthy country.

Rather than intervention from a police state, this article suggests that the concepts of home sharing, fostering a family and Community Courts could operate at the ground level and meet homeless families and children where they are. In order for these opportunities to be feasible, the state would need to support a legal and financial framework to set minimum requirements that might include licensing, a clearinghouse, and periodic assessments to ensure safety of the children. A public-private partnership

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219. Ram A. Cnaan, Book Review, 10 J. POL'Y ANALYSIS & MGMT. 135 (1991) (reviewing PETER H. ROSSI, *DOWN AND OUT IN AMERICA: THE ORIGINS OF HOMELESSNESS* (1989) and MICHAEL H. LANG, *HOMELESSNESS AMID AFFLUENCE: STRUCTURE AND PARADOX IN THE AMERICAN POLITICAL ECONOMY* (1989)).

would require guidelines based upon the subsidiarity and vulnerability framework to prevent the same structural issues from negatively affecting the new concepts. The question remains whether the state has a moral obligation to establish this framework, and if not, will individuals and groups fill the gap to answer humanity's call to arms.